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In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 379

RAYMOND J. HANSEN, ET AL., PETITIONERS

v.

STEWART L. UDALL, SECRETARY OF THE INTERIOR, AND ROBERT S. LIGHT, ET AL.

LOUISE SAFARIK, ET AL., PETITIONERS

v.

STEWART L. UDALL, SECRETARY OF THE INTERIOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE SECRETARY OF THE INTERIOR IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 15–26) is reported at 304 F. 2d 944. The district court did not write an opinion.

JURISDICTION

The judgment of the court of appeals was entered on June 7, 1962 (Pet. App. 27–28). The petition for a writ of certiorari was filed on August 27, 1962. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

The Secretary of the Interior ruled that, contrary to an earlier Department interpretation of the Mineral Leasing Act, an assignment of a lease will extend the term of the lease only if the assignment is made prior to the last month of the original term. The question presented is whether the Secretary of the Interior properly applied his subsequent interpretation only prospectively where a large number of leases were extended in reliance upon the earlier interpretation.

STATUTES AND REGULATIONS INVOLVED

Section 17 of the Mineral Leasing Act of 1920, 41 Stat. 437, 443, as amended by the Acts of August 8, 1946, 60 Stat. 950, 951, and July 29, 1954, 68 Stat. 583, 584, 30 U.S.C. 226, at the time appellants made their lease offers provided in pertinent part:

> All lands subject to disposition under this Act which are known or believed to contain oil or gas deposits may be leased by the Secretary of the Interior. * * * Leases issued under this section shall be for a primary term of five years and shall continue so long thereafter as oil or gas is produced in paying quantities.
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> * * * * * *
>
> Upon the expiration of the initial five-year term of any noncompetitive lease maintained in accordance with applicable statutory requirements and regulations, the record titleholder thereof shall be entitled to a single extension of the lease, unless then otherwise provided by law, for such lands covered by it as are not on the expiration date of the lease withdrawn from

> leasing under this section. * * * A noncompetitive lease, as to lands not within the known geologic structure of a producing oil or gas field, shall be extended for a period of five years and so long thereafter as oil or gas is produced in paying quantities. A noncompetitive lease, as to lands within the known geologic structure of a producing oil or gas field, shall be extended for a period of two years and so long thereafter as oil or gas is produced in paying quantities. * * *[1]

Section 30(a) of the Mineral Leasing Act of 1920, added by the Act of August 8, 1946, 60 Stat. 950, 955, and amended by the Act of July 29, 1954, 68 Stat. 583, 30 U.S.C. 187a, provided in pertinent part:

> Notwithstanding anything to the contrary in section 30 hereof, any oil or gas lease issued under the authority of this Act may be assigned or subleased, as to all or part of the acreage included therein, subject to final approval by the Secretary and as to either a divided or undivided interest therein, to any person or persons qualified to own a lease under this Act, and any assignment or sublease shall take effect as of the first day of the lease month following the date of filing in the proper land office of three original executed counterparts thereof * * *. Any partial assignment of any lease shall segregate the assigned and retained portions thereof, and as above provided, release and discharge the assignor from all obligations thereafter accruing with respect to the assigned lands; and such segregated leases shall continue

[1] Since the Mineral Leasing Act Revision of 1960, 74 Stat. 781, 782, these leases simply have a primary term of 10 years.

in full force and effect for the primary term of the original lease, but for not less than two years after the date of discovery of oil or gas in paying quantities upon any other segregated portion of the lands originally subject to such lease. Assignments under this section may also be made of parts of leases which are in their extended term because of any provision of this Act. The segregated lease of any undeveloped lands shall continue in full force and effect for two years and so long thereafter as oil or gas is produced in paying quantities.

Part 192 of Title 43 of the Code of Federal Regulations sets forth the regulations pertaining to oil and gas leases. 43 C.F.R. 192.140 (1954 ed.) at the time of petitioners' lease offers provided in pertinent part:

§ 192.140 *Assignments or transfers of leases or interests therein.* Leases may be assigned or subleased as to all or part of the leased acreage and as to either a divided or undivided interest therein to any person or persons qualified to hold a lease. Subject to final approval by the Bureau of Land Management, assignments or subleases shall take effect as of the first day of the lease month following the date of filing in the proper land office of all the papers required by §§ 192.141 and 192.142.

* * *

43 C.F.R. 192.144 (1954 ed.) provided:

§ 192.144 *Extensions of leases segregated by assignment.* (a) Any lease segregated by assignment, including the retained portion, shall continue in effect for the primary term of the original lease, or for two years after the date of discovery of oil or gas in paying quantities

upon any other segregated portion of the original lease, whichever is the longer period.

(b) Undeveloped parts of leases assigned out of leases which are in their extended term under any provision of the act shall continue in effect for two years, and so long thereafter as oil or gas is produced in paying quantities.

STATEMENT

Petitioners filed applications for oil and gas leases involving lands included in existing leases which had been extended for two years by assignments made during the twelfth month of the last year of the terms (R. 4, 29).[2] After the Secretary of the Interior denied the applications, petitioners brought this action for a declaratory judgment to review this determination. The facts giving rise to the actions may be summarized as follows:

Section 30(a) of the Mineral Leasing Act and the regulations pursuant thereto permitted the assignment of oil and gas leases, the assignment to "take effect as of the first day of the lease month following the date of filing in the proper land office * * *." Section 30(a) provides that such assignments run for at least two years even if the original lease would have expired earlier. In 1957 an Associate Solicitor of the Department of the Interior ruled that an assignment filed in the twelfth month of the last year of the lease term would effect a two-year extension of the lease term (R. 47–50). Numerous leases were extended under his interpretation.

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[2] "R." refers to the Joint Appendix in the court of appeals.

In 1958, the Secretary of the Interior decided that an assignment would have to have been filed prior to the twelfth month of the last year of the term in order to effect a two-year extension since the assignment is to take effect the first day of the following month. *Franco Western Oil Co.*, 65 I.D. 316 (R. 10). To avoid the harsh result of upsetting hundreds of leases extended under the earlier interpretation, the Secretary held in a supplemental decision that his subsequent interpretation would be applied prospectively only. *Franco Western Oil Co.*, 65 I.D. 427 (R. 16). The leases involved in petitioners' applications had been assigned during the final month of their term and prior to the time the Secretary had ruled that such applications would not in the future extend the lease. Since the lands involved were included in outstanding leases at the time petitioners' offers were filed, the Secretary denied the offers (R. 7–9, 36–43).

The district court granted the Secretary's motions for summary judgment, denied petitioners' cross-motions, and dismissed the complaints (R. 44, 56, 73). The court of appeals affirmed the dismissals on the grounds that the Act and regulations were reasonably open to both interpretations and that the Department of the Interior had discretion to decline to give retroactive application to changes in interpretations which would have inequitable results (Pet. App. 23–26).

ARGUMENT

1. Petitioners claim that the Mineral Leasing Act is "clear" (Pet. 2, 5, 7, 8, 9, 10)—that it does not allow assignments made during the twelfth month of the last year of the lease terms to extend the lease for two years. In fact, however, the Act, as well as the departmental regulations, do not specifically deal with this problem. In the absence of any clear statutory language, the Department of the Interior originally followed the practice of considering assignments in the last month of the lease as effecting a two-year extension of the lease. Subsequently, however, the Secretary of the Interior, as he stated, took "a different view" (R. 17) of the language of Section 30(a) and overruled the earlier interpretation.[3] In

[3] The Secretary's reasoning was as follows (R. 13–15):

"Section 30(a) provides that assignments may be made "subject to final approval by the Secretary" and that an assignment 'shall take effect as of the first day of the lease month following the date of filing of the assignment' in the proper land office. * * * .

"While the section provides that any partial assignment of any lease shall segregate the assigned and retained portions thereof, that provision must be read with the other language therein to mean, not that the assignment itself shall segregate the lands held under lease, but that the assigned and retained portions of the base lease shall become separate leases on the effective date of the assignment, provided the assignment is ultimately approved

"For the leases to become segregated, and thus be entitled to the extension provided for in the last sentence of the section, an assignment must have been filed while there is at least one full 'lease month' remaining in the term of the lease. Otherwise there is no first day of the lease month following the date of filing' upon which the assignment can take effect. Thus where the expiration date of a lease covering unde-

both of these interpretations the Department of Interior was "filling a gap" in the statute and regulations. While we believe that the second ruling is amply supported by the statute, we agree with the court of appeals[4] that it is not clearly demanded by

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veloped lands is the last day of the month in which an assignment of a portion thereof is filed, there is no 'first day of the lease month following the date of filing' upon which the assignment can take effect. In such a situation the lease will have terminated before the assignment can become effective and thus the assigned and retained portions of the base lease never ripen into segregated leases.

* * * * *

"The rule for computing time also requires that every day and every part of that day be considered, in contemplation of law, to be one day before the first moment of the next day, although the elapsed time is infinitesimal, and that if an act is to be performed after a certain day it cannot be performed until the whole of that day has elapsed. 86 C.J.S. Time § 16."

[4] The court of appeals analyzed the statute as follows (Pet. App. 23–24):

"Neither § 30(a), as amended, supra, nor any other provision of the Mineral Leasing Act of 1920, expressly or by necessary or impelling implication provides that an assignment of an oil and gas lease made in the last month of the last year of the term of the lease, although not having operating effect until the first day of the succeeding month, shall be ineffectual as an assignment of the lease and as an extension of the term for a period of two years. In other words, it is not clear that Congress intended that the imperceptible instant of time intervening between the termination of the lease term and the effective date of the assignment should render ineffectual such assignment. It was the administrative practice under the Leasing Act, in order to facilitate administration with respect to rental payments, times of expiration of leases and other like matters, to have lease terms begin on the first day of a month and terminate on the last day of the month. It is not unreasonable to assume that the purpose of the provision in § 30(a), as amended, supra, that an assign-

the statute itself—that, at the least, it is not so obvious that it must be applied retroactively so as to upset lease arrangements based on a contrary Department determination.

2. The courts have sanctioned authorized retroactive rulemaking by administrative agencies when the public ends sought to be accomplished outweigh the hardship imposed.[5] But we know of no case deciding that administrative agencies *must* give retroactive effect to their decisions, including interpretations of statutes and regulations. The power to rule prospectively has been exercised by the Secretary in numerous instances (see R. 17, 18). Likewise, the courts have the power, which they have frequently exercised, to rule prospectively to avoid hardship to persons who have relied on previous decisions (see Pet. App. 26).

As the court of appeals aptly concluded (Pet. App. 24–26):

> It is obvious that the Secretary of the Interior, in carrying out his functions in the administration and management of the public lands,

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ment or sublease should take effect as of the first day of the month following the date of the filing in the proper land office was to facilitate administration, rather than limit extensions of lease terms by such assignments to not more than one year and eleven months after the expiration of the lease term. Accordingly, while we accept the construction of the Secretary in the decision of August 11, 1958, we are of the opinion that the pertinent provisions of the Leasing Act were reasonably open to the construction reached by the Assistant Solicitor by his opinion of June 4, 1957."

[5] *Securities Comm'n* v. *Chenery Corp.*, 332 U.S. 194, 203; *Addison* v. *Holly Hill Fruit Products*, 322 U.S. 607, 620; *National Labor Relations Bd.* v. *Guy F. Atkinson Co.*, 195 F. 2d 141, 146–149 (C.A. 9).

> must be accorded a wide area of discretion and it is a well-recognized rule that administrative action taken by him will not be disturbed by a court unless it is clearly wrong.
>
> We conclude that the Secretary of the Interior, under facts and circumstances like those present in the instant cases, should have and does have authority, when he promulgates an interpretative regulation, or hands down a decision placing a different construction on a statute or regulation from that laid down in an earlier decision or regulation, to give prospective operation only to the later regulation or decision.

In short, we submit that the Secretary had discretion to rule prospectively and that the discretion is not abused where this is done in order to avoid serious hardship. Here, thousands of persons (see Pet. App. 22) had relied on the 1957 interpretation of the statute by paying for the assignment of leases during the last month and for exploration and development costs on the lands subject to these leases. Surely, the Secretary of the Interior could protect such persons from losses resulting from the Department's change of position.

CONCLUSION

For the foregoing reasons, we respectfully submit that the petition for a writ of certiorari should be denied.[6]

ARCHIBALD COX,
Solicitor General.
ROGER P. MARQUIS,
RAYMOND N. ZAGONE,
Attorneys.

SEPTEMBER 1962.

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[6] In the event the petition is granted, the Secretary of the Interior reserves the right to make the additional arguments, urged but not ruled upon below, that the lands involved were included in leases recorded on the tract books and were therefore not available for leasing at the time petitioners' applications were made, and that dismissal of the suits was also proper because of the absence of the lessees, who are indispensable parties.